

Notice of Allowability	Application No.	Applicant(s)	
	09/804,983	LEEDOM, MARVIN A.	
	Examiner	Art Unit	
	Suhan Ni	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

ALL CLAIMS BEING ALLOWABLE, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to 7/26/04.
2. The allowed claim(s) is/are 1-18,26-42,46-49 and 51-53.
3. The drawings filed on 13 March 2001 are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some* c) None of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____ .
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) hereto or 2) to Paper No./Mail Date _____.
(b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of
Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. Notice of References Cited (PTO-892)
2. Notice of Draftperson's Patent Drawing Review (PTO-948)
3. Information Disclosure Statements (PTO-1449 or PTO/SB/08),
 Paper No./Mail Date 7/26/04
4. Examiner's Comment Regarding Requirement for Deposit
 of Biological Material
5. Notice of Informal Patent Application (PTO-152)
6. Interview Summary (PTO-413),
 Paper No./Mail Date _____.
7. Examiner's Amendment/Comment
8. Examiner's Statement of Reasons for Allowance
9. Other _____. *[Handwritten signature]*

Suhan Ni
Primary Examiner
Art Unit: 2643

DETAILED ACTION

1. This communication is responsive to the amendment filed 7/26/04.

Election/Restriction

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-18, 26-42, 46-49 and 51-53, drawn to the structures/structural elements of a hearing aid;
 - II. Claims 54-56 and 58, drawn to the structures/structural elements of a tip for a hearing aid.
3. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP ' 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the invention I only drawn to a hearing aid. The subcombination has separate utility such as utilized to another type hearing aid.
4. Because these inventions are distinct for the reasons giving above and have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes as indicated is proper.
5. During a telephone conversation with Mr. K. T. Shaughnessy on 09/17/2004, a provisional election was made without traverse to prosecute the invention of Group I, claims 1-18 and 26-58. Group II, claims 54-58 are withdrawn from further consideration by the examiner,

37 CFR 1.142(b), as being drawn to a non-elected invention and cancelled by the examiner's amendment.

Allowable Subject Matter

6. Claims 1-18, 26-42, 46-49 and 51-53 are allowed.

Conclusion

7. Any comments considered necessary by applicant must be submitted no later than the payment on the Issue Fee and, to avoid processing delays, should preferably accompany the Issue Fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance".

8. Any response to this final action should be mailed to:

**Commissioner of Patents and Trademarks
Washington, D.C. 20231**

Or faxed to:

(703) 308-9051, (for formal communications; please mark "EXPEDITED PROCEDURE"), or
(703) 305-9508, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

**Receptionist, Sixth Floor,
Crystal Park II,
2121 Crystal Drive,
Arlington, Virginia 22202**

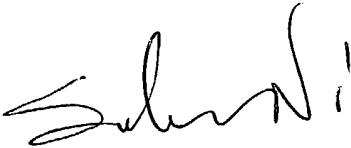
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (703)-308-9322, and the number for fax machine is (703)-305-9508. The examiner can normally be reached on Monday

through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at **(703) 305-4708**.

10. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(703) 305-3900**.

SN

September 18, 2004



SUHAN NI
PRIMARY EXAMINER

Office Action

Examiner's Amendment

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

2. The application has been amended as follows:

In the claims:

Please cancel claims 54-56 and 58.

(End of Examiner's Amendment)



SUHANNI
PRIMARY EXAMINER